

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

Clerk's Minutes

Before the Honorable Scott W. Skavdahl

Case No. CIV 19-120 SWS/MLC

Date: 1/28/20

Title: ALLEN v. PEABODY NEW MEXICO SERVICES, LLC; WALT MURLOWSKI

Courtroom Clerk: J. Gonzales

Court Reporter: Anne Bowline

Court in Session: 9:03 a.m.

Court in Recess: 10:11 a.m.

10:22 a.m.

11:56 a.m.

1:17 p.m.

3:21 p.m.

4:35 p.m.

5:22 p.m.

Interpreter:

Type of Hearing: Bench Trial

Total Court Time: 5 hours 33 minutes

Court's Rulings/Disposition:

Attorney's Present for Plaintiff(s)

Attorney's Present for Defendant(s):

David Jordan

Jessica Thomas, Amelia Willis

Proceedings:

9:03 a.m. Court in session. Court announces parties. Walter Murlowski present at defense table. Marshall Allen present at plaintiff table.

Counsel have no preliminary matters.

Mr. Jordan: Gives opening statement.

Ms. Willis: Gives opening statement.

Mr. Jordan: Calls Marshall Allen/**SWORN** – confirms exhibits 1, 2 and 3 are admitted.

Ms. Willis: No objection to exhibits 1, 2 and 3.

Court: Admits exhibits 1, 2 and 3.

Mr. Jordan: Conducts direct examination of Mr. Allen.

Court: Queries Mr. Allen.

Mr. Allen: Responds.

Mr. Jordan: Continues direct examination of Mr. Allen – moves to admit exhibit 4.

Ms. Willis: Objects to exhibit 4.

Mr. Jordan: Argues in support of admission of exhibit 4.

Court: Conditionally admits exhibit 4.

Mr. Jordan: Continues direct examination of Mr. Allen.

10:11 a.m. Court in recess.

10:22 a.m. Court in session.

Ms. Willis: Conducts cross examination of Mr. Allen – moves to admit exhibit 14 medical records from Tsehootooi Medical Center.

Mr. Jordan: Objects to admission of exhibit 14.

Court: Will be marked and used as impeachment document.

Ms. Willis: Continues cross examination of Mr. Allen – moves to admit exhibit 11.

Mr. Jordan: No objection.

Court: Admits exhibit 11.

Ms. Willis: Moves to admit exhibit 9.

Mr. Jordan: No objection.

Court: Admits exhibit 9.

Ms. Willis: Continues cross examination of Mr. Allen – moves to admit exhibit 13.

Court: No objections – admits exhibit 13.

Ms. Willis: Continues cross examination of Mr. Allen - moves to admit exhibit 12.

Court: No objections - admits exhibit 12.

Ms. Willis: Continues cross examination of Mr. Allen – moves to admit exhibit 10.

Court: No objections – admits exhibit 10.

Mr. Jordan: Conducts re-direct examination of Mr. Allen.

Court: Queries Mr. Allen.

Mr. Allen: Responds.

Mr. Jordan: Calls Juan Tena/**Sworn** – conducts direct examination of Mr. Tena.

Ms. Thomas: Conducts cross examination of Mr. Tena.

Mr. Jordan: Conducts re-direct examination of Mr. Tena.

Court: Queries Mr. Tena.

Mr. Tena: Responds.

Mr. Jordan: Rests.

11:56 a.m. Court in recess.

1:17 p.m. Court in session.

Ms. Willis: Calls Walter Murlowski/**SWORN** – conducts direct examination of Mr. Murlowski.

Mr. Jordan: Moves to admit defense exhibit 8.

Ms. Willis: No objection to exhibit 8 – moves to admit 1 and 7.

Court: Admits defense exhibits 1, 7 and 8.

Mr. Jordan: Conducts cross examination of Mr. Murlowski.

Court: Queries Mr. Murlowski.

Mr. Murlowski: Responds.

2:37 p.m. Court in recess.

2:54 p.m. Court in session.

Ms. Thomas: Calls Mick Derudder/**Sworn** – conducts direct examination of Mr. Derudder.

Mr. Jordan: No cross examination of Mr. Derudder.

Ms. Willis: Calls Marshall Allen/previously sworn– moves to admit to defense exhibit 2.

Court: No objection – admits defense exhibit 2.

Ms. Willis: Conducts direct examination of Mr. Allen – moves to admit defense exhibits 15 and 16.

Mr. Jordan: Conducts cross examination of Mr. Allen.

Court: No objection - admits defense exhibits 15 and 16 are admitted.

Ms. Willis: Conducts re-direct of Mr. Allen – defense rests.

3:21 p.m. Court in recess.

4:35 p.m. Court in session.

Court: Reviewed defense exhibits 15 and 16 during break – takes judicial notice as to 1-888 phone number dialed after phone call to Mr. Murlowski.

Ms. Willis and Mr. Jordan stipulate to 1-888 number being Lincoln Financial.

Ms. Willis: Marks defense exhibit 17.

Court: Admits exhibit 17.

Mr. Jordan: Presents closing argument.

Ms. Willis: Presents closing argument.

Court: Queries Mr. Jordan.

Mr. Jordan: Responds – consents to dismissal of Mr. Murlowski .

Counsel stipulate to the dismissal of Mr. Murlowski.

5:22 p.m. Court in recess.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Before the Honorable Scott Skavdhal

Exhibit List

Case Title: Allen v. Peabody NM Services, LLC et al.

Case Number: CIV 19-120 SWS-MLC

Bench Trial Date: 1/28/20

Courtroom Clerk: J. Gonzales

Court Reporter: Anne Bowline

Interpreters:

Attorney(s) Present for Plaintiff: David Jordan

Attorney(s) Present for Defendant: Jessica Thomas, Amelia Willis

Plain. No.	Def. No.	Date Offered	Admitted?	Objection?	Brief Description
1		1/28/20	x		Physician Note dated 7/7/17
2			x		Physician Note dated 12/12/18
3			x		Physician Note dated 12/17/18
4			(conditionally admitted by the Court)	x	Letter from Melonie Blancaneaux
	9		x		Employee direct deposit records
	10		x		2016 W-2
	11		x		Empire pay stubs
	12		x		2017 W-2
	13		x		2018 W-2
	14			x	Medical Records from Tsehootsooi
	1		x		Peabody Employee Guidebook
	7		x		Peabody Employee Status Change Form
	8		x		Letter from Lincoln Financial
	2		x		Peabody Handbook Receipt Acknowledgement
	15		x		Cell phone records
	16		x		Cell Phone records

[illegible]